Case C-78/98

Shirley Preston and Others

v

Wolverhampton Healthcare NHS Trust and Others

(Reference for a preliminary ruling
from the House of Lords)

(Social policy — Men and women — Equal pay — Membership of an occupational pension scheme — Part-time workers — Exclusion — National procedural rules — Principle of effectiveness — Principle of equivalence)

Opinion of Advocate General Léger delivered on 14 September 1999 . . . I-3204
Judgment of the Court, 16 May 2000 . . . . . I-3240

Summary of the Judgment

1. *Social policy — Men and women — Equal pay — Claim for membership of an occupational pension scheme — Time-bar of six months from the end of the employment in question — Whether permissible — Compliance with the principle of the effectiveness of Community law — Refusal to take into account service prior to the two years preceding the claim*

(EC Treaty, Art. 119 (Arts 117 to 120 of the EC Treaty have been replaced by Arts 136 EC to 143 EC))

2. *Social policy — Men and women — Equal pay — Action before the national court — Principle of equivalence of procedural rules with those concerning similar domestic actions — Similarity of a domestic action — Equivalence of procedural rules — Criteria*

   (EC Treaty, Art. 119 (Arts 117 to 120 of the EC Treaty have been replaced by Arts 136 EC to 143 EC))

3. *Social policy — Men and women — Equal pay — Claim for membership of an occupational pension scheme where there is a succession of contracts of limited duration — Time-bar — Application to each of the contracts — Not permissible — Breach of the principle of effectiveness*

   (EC Treaty, Art. 119 (Arts 117 to 120 of the EC Treaty have been replaced by Arts 136 EC to 143 EC))

1. Community law does not preclude a national procedural rule which requires that a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) — a claim based on sex discrimination contrary to Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) — must, if it is not to be time-barred, be brought within six months of the end of the employment to which the claim relates, provided, however, that that limitation period is not less favourable for actions based on Community law than for those based on domestic law. The setting of such a time-limit, inasmuch as it constitutes an application of the fundamental principle of legal certainty, satisfies the requirement of the principle of the effectiveness of Community law, according to which procedural rules for proceedings designed to ensure the protection of rights acquired through the direct effect of Community law are not framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order.

   However, the principle of effectiveness precludes a national procedural rule which provides that a claimant's pensionable service is to be calculated only be reference to service after a date falling no earlier than two years prior to the date of the claim. Even though such a procedural rule does not totally deprive the claimants of access to membership, it prevents the entire record of service completed by those concerned before the two years preceding the date on which they commenced their proceedings from being taken into account for the purposes of calculating the benefits which would be payable even after the date of the claim.

   (see paras 31, 33–35, 37, 43–45, and operative part 1-2)

2. In order to verify whether the national legislation complies with the principle of equivalence, according to which the procedural rules for proceeding designed to ensure the protection of the rights acquired through the direct effect of Community law must not be

less favourable than those governing similar domestic actions, an action based on the infringement of a statute such as the Equal Pay Act 1970 in force in the United Kingdom cannot be regarded as constituting a domestic action alleging infringement of Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC). By the very fact that it implements in domestic law the Community principle of non-discrimination on grounds of sex in relation to pay, pursuant to Article 119 of the Treaty and Directive 75/117, such a statute cannot provide an appropriate ground of comparison of procedural rules for different claims, one relying on a right conferred by Community law, the other on a right acquired under domestic law.

In order to determine whether a right of action available under domestic law is a domestic action similar to proceedings to give effect to rights conferred by Article 119 of the Treaty, the national court must consider whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics.

In order to decide whether procedural rules are equivalent, the national court must verify objectively, in the abstract, whether the rules at issue are similar taking into account the role played by those rules in the procedure as a whole, as well as the operation of that procedure and any special features of those rules.

(see paras 31, 51–53, 57, 63, and operative part 3-5)

3. Community law, and more particularly the principle of its effectiveness, precludes a national procedural rule which has the effect of requiring a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) — a claim based on sex discrimination contrary to Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) — to be brought within six months of the end of each contract of employment to which the claim relates where there has been a stable employment relationship resulting from a succession of short-term contracts concluded at regular intervals in respect of the same employment to which the same pension scheme applies. Whilst it is true that legal certainty also requires that it be possible to fix precisely the starting point of a limitation period, the fact nevertheless remains that, in the case of successive short-term contracts, setting the starting point of the limitation period at the end of each contract renders the exercise of the right conferred by Article 119 of the Treaty excessively difficult when it is possible to fix a precise starting point for the limitation period.

(see paras 68–69, 72, and operative part of 6)